



May 22, 2001

Mr. James L. Hall
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342

OR2001-2116

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 147513.

The Texas Department of Criminal Justice (the "department") received a written request for all medical and disciplinary records pertaining to a deceased inmate.¹ The requestor is an attorney representing the estate of the deceased inmate. You contend that the requested information is excepted from required public disclosure pursuant to sections 552.103, 552.108, and 552.131 of the Government Code.

We note at the outset that the release of the requested medical records is governed by the Texas Medical Practice Act (the "MPA"), Occ. Code § 151.001 *et. seq.*, not the Public Information Act. Section 159.002 of the Occupations Code provides in pertinent part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

Additionally, section 159.006(a) of the Occupations Code provides as follows:

¹The requestor also seeks "the coroner's report, autopsy report and death certificate." You state that the department does not possess these records at this time.

Unless the physician determines that access to the information would be harmful to the physical, mental, or emotional health of the patient, a physician who receives a written consent for release of information *as provided by Section 159.005 shall furnish copies of the requested medical records*, or a summary or narrative of the records, including records received from a physician or other health care provider involved in the care or treatment of the patient. The physician shall furnish the information not later than the 30th day after the date of receipt of the request. [Emphasis added.]

Section 159.005(a)(5) provides that the "personal representative" of the deceased is one such individual entitled to authorize the release of the deceased's medical records. Additionally, the consent to release must specify (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Occ. Code § 159.005(b). We thus conclude that pursuant to section 159.006(a), the department must release the medical records at issue upon receipt of a signed, written consent for the release of the records as provided by section 159.005.

We now address whether the inmate's disciplinary records are excepted from public disclosure under section 552.131 of the Government Code. Section 552.131 relates to inmates of the department and provides in relevant part:

(a) Except as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the Texas Department of Criminal Justice is excepted from [required public disclosure] if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Gov't Code § 552.131(a).² Section 552.029 of the Government Code provides in relevant part:

Notwithstanding . . . Section 552.131, the following information about an inmate who is confined in a facility operated by or under a contract with the Texas Department of Criminal Justice is subject to required disclosure[:]

...

²As of the date of this letter ruling, four different sections of the Act were denominated as section 552.131. Sections 552.131 and 552.029, relating to inmates of the department, were added to chapter 552 of the Government Code by the Act of May 26, 1999, 76th Leg., R.S., ch.783, §§ 1, 2, 1999 Tex. Gen. Laws 3407-08.

(8) *basic information regarding the death of an inmate in custody, an incident involving the use of force, or an alleged crime involving the inmate.*

Gov't Code § 552.029(8) (emphasis added). Thus, the legislature explicitly made section 552.131 subject to section 552.029. Pursuant to section 552.029(8), "basic information" regarding the death of an inmate in custody or an alleged crime involving the inmate is subject to required disclosure. The basic information that is subject to disclosure under section 552.029(8) includes the time and place of the incident, the names of inmates and of department employees who were involved, a brief narrative of the incident, a brief description of any injuries sustained by anyone involved, and information regarding any criminal charges or disciplinary actions that were filed as a result of the incident. We emphasize that pursuant to section 552.029, this information must be released to the requestor.³ As to the remainder of the inmate's disciplinary records, we conclude that information is excepted from disclosure under section 552.131.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental

³Because we are able to resolve this aspect of your request under section 552.131, we need not address the applicability of sections 552.103 and 552.108 except to note that the information that is subject to release under section 552.029 is not excepted by either of these exceptions. *See* Open Records Decision No. 597 (1991) (section 552.103 does not protect basic information); Gov't Code § 552.108(c) (section 552.108 does not protect basic information).

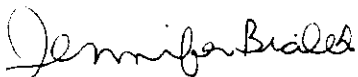
body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer Bialek
Assistant Attorney General
Open Records Division

JHB/RWP/seg

Ref: ID# 147513

Encl. Submitted documents

cc: Mr. Sarnie A. Randall, Jr., Esq.
5177 Richmond Avenue, Suite 635
Houston, Texas 77056
(w/o enclosures)